

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE BILL 31

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

AN ACT

RELATING TO TAXATION; ENACTING THE RESEARCH AND DEVELOPMENT  
SMALL BUSINESS TAX CREDIT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Research and Development Small Business Tax Credit Act".

Section 2. DEFINITIONS.--As used in the Research and  
Development Small Business Tax Credit Act:

A. "department" means the taxation and revenue  
department, the secretary of taxation and revenue or any  
employee of the department exercising authority lawfully  
delegated to that employee by the secretary;

B. "qualified research" means research:

(1) that is undertaken for the purpose of  
discovering information that is technological in nature and the

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1 application of which is intended to be useful in the  
2 development of a new or improved business component of the  
3 taxpayer; and

4 (2) in which substantially all activities  
5 constitute elements of a process of experimentation related to  
6 new or improved function, performance, reliability or quality,  
7 but not related to style, taste, cosmetic or seasonal design  
8 factors;

9 C. "qualified research and development small  
10 business" means a business, including a corporation, general  
11 partnership, limited partnership, limited liability company,  
12 sole proprietorship or other similar entity, that:

13 (1) employed no more than twenty-five  
14 employees on a full-time-equivalent basis in any prior calendar  
15 month;

16 (2) had total revenues of no more than ten  
17 million dollars (\$10,000,000) in any prior fiscal year;

18 (3) did not in any prior calendar month have  
19 more than fifty percent of its voting securities or other  
20 equity interest with the right to designate or elect the board  
21 of directors or other governing body of the qualified business  
22 owned directly or indirectly by another business; and

23 (4) has made qualified research expenditures  
24 for the period of twelve calendar months ending with the month  
25 for which the credit is sought of at least twenty percent of

1 its total revenues for those twelve calendar months;

2 D. "qualified research expenditure" means an  
 3 expenditure directly related to qualified research, but does  
 4 not include any expenditure on research funded by any grant,  
 5 contract or similar mechanism by another person or governmental  
 6 entity, and does not include any expenditure on property that  
 7 is owned by a municipality or county in connection with an  
 8 industrial revenue bond project or expenditures for which the  
 9 taxpayer has received any credit pursuant to the Capital  
 10 Equipment Tax Credit Act, the Investment Credit Act or the  
 11 Technology Jobs Tax Credit Act; and

12 E. "taxpayer" means a person liable for payment of  
 13 any tax, a person responsible for withholding and payment or  
 14 collection and payment of any tax or a person to whom an  
 15 assessment has been made if the assessment remains unabated or  
 16 the amount thereof has not been paid.

17 Section 3. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX  
 18 CREDIT--AMOUNT--ELIGIBILITY.--

19 A. A taxpayer that is a qualified research and  
 20 development small business is eligible for a credit in a  
 21 reporting period in an amount equal to the sum of all gross  
 22 receipts taxes, compensating taxes or withholding taxes due to  
 23 the state or payable by the taxpayer with respect to that  
 24 business for that reporting period. The credit provided in  
 25 this section may be referred to as the "research and

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1 development small business tax credit".

2 B. A taxpayer is not eligible for the credit with  
3 respect to a reporting period in a calendar month:

4 (1) before July 2004;

5 (2) that is more than thirty-five consecutive  
6 calendar months after the first month for which a claim for the  
7 credit is made by the taxpayer or by a person to whom the  
8 taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978;

9 (3) after which the qualified research and  
10 development small business employs more than twenty-five  
11 employees on a full-time-equivalent basis;

12 (4) in a fiscal year of the qualified research  
13 and development small business after the first fiscal year in  
14 which that business has total revenues in excess of ten million  
15 dollars (\$10,000,000);

16 (5) after the calendar month in which more  
17 than fifty percent of the qualified research and development  
18 small business' voting securities or other equity interests  
19 having the right to designate or elect the board of directors  
20 or other governing body of that business are owned directly or  
21 indirectly by another business;

22 (6) if the business was not a qualified  
23 research and development small business in the twelve-calendar-  
24 month period ending with that calendar month;

25 (7) during which the taxpayer is the

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1 beneficiary of an industrial revenue bond issued by a  
 2 municipality or county;

3 (8) as to which the taxpayer claims any credit  
 4 pursuant to the Capital Equipment Tax Credit Act, the  
 5 Investment Credit Act or the Technology Jobs Tax Credit Act; or

6 (9) during which the taxpayer sold any goods  
 7 of which the taxpayer is not the manufacturer, unless the  
 8 taxpayer has received an appropriate nontaxable transaction  
 9 certificate for such sale or sales.

10 Section 4. CLAIMING THE CREDIT--CREDIT CLAIM FORMS.--The  
 11 taxpayer shall claim the research and development small  
 12 business tax credit within one year after the end of the  
 13 reporting period to which the credit is applicable. The  
 14 department shall provide credit claim forms for the research  
 15 and development small business tax credit. A credit claim form  
 16 shall accompany any return in which the taxpayer claims the  
 17 credit, and the claim shall specify the amount of credit  
 18 intended to apply to each return.

19 Section 5. LIMITATION ON OTHER CREDITS.--Claiming the  
 20 research and development small business tax credit with respect  
 21 to a reporting period renders the taxpayer ineligible to claim  
 22 a credit with respect to that same reporting period pursuant to  
 23 the Capital Equipment Tax Credit Act, the Investment Credit Act  
 24 or the Technology Jobs Tax Credit Act.

25 Section 6. ADMINISTRATION OF THE ACT.--The department

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1 shall administer the Research and Development Small Business  
2 Tax Credit Act pursuant to the Tax Administration Act.

3 Section 7. EFFECTIVE DATE.--The effective date of the  
4 provisions of this act is July 1, 2004.

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